

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS**

NOTICE OF FINAL RULEMAKING

The District of Columbia Board of Elections and Ethics hereby gives notice of final rulemaking action to adopt the following amendments to 3 DCMR Chapter 4, "Hearings," 3 DCMR Chapter 5, "Voter Registration," and 3 DCMR Chapter 7, "Election Procedures."

The District of Columbia Board of Elections and Ethics took final action to adopt the following amendments to 3 DCMR Chapters 4, 5, and 7 at a special board meeting which was held on Wednesday, December 17, 2003. The amendments will alter the Board's administrative complaint procedures so as to accommodate complaints which allege violations of Title III of the Help America Vote Act of 2002 ("the Act"); situate in the Board's regulations the circumstances specified in the Act which would require an individual to vote by special ballot, as well as the procedures by which to appeal the Board's special ballot determinations; outline new voter registration requirements as set forth in the Act, and other purposes.

No comments were received, and no changes were made to the text of the proposed rules as published in the Notice of Proposed Rulemaking (xx DCR xx, November, 2003).

Amend Section 400 by deleting Subsection 400.1 in its entirety and substituting the following in its place:

- 400.1 The provisions of this chapter shall govern the procedures of the Board in all cases involving petition challenges; alleged violations of the District of Columbia Election Act, as amended; alleged violations of the District of Columbia Campaign Finance Reform and Conflict of Interest Act, as amended; alleged violations of Title III of the Help America Vote Act of 2002; and petitions requesting the promulgation, amendment, or repeal of any regulation of the Board.

Amend Section 408 by:

- 1) Deleting Subsection 408.1 in its entirety and substituting the following in its place:

"408.1 An action before the Board shall be commenced by the filing of a written complaint which shall be signed and sworn by the complainant and notarized."
- 2) Adding a new Subsection 408.6 to read follows:

“408.6 The Board may consolidate complaints alleging violations of Title III of the Help America Vote Act of 2002 if they relate to the same actions or events or raise common questions of law or fact.”

Amend Section 428 by adding the following subsections:

428.6 If the Board determines that there is a violation of any provision of Title III of the Help America Vote Act of 2002, the Board shall provide the appropriate remedy.

428.7 If the Board determines that there is no violation of Title III of the Help America Vote Act of 2002, the Board shall dismiss the complaint and publish the results of the hearing on the Board’s website.

428.8 The Board shall render final determinations with respect to complaints alleging violations of Title III of the Help America Vote Act of 2002 prior to the expiration of the 90-day period which begins on the date the complaint is filed, unless the complainant consents to a longer period for making such a determination.

428.9 If the Board fails to meet the deadline applicable under Subsection 428.8, the complaint shall be resolved within 60 days under alternative dispute resolution procedures established pursuant to Section 431 of this chapter. The record and other materials from any proceedings conducted under standard Board complaint procedures shall be made available for use under the alternative dispute resolution procedures.

Add a new Section 432 to read as follows:

“432 ALTERNATIVE DISPUTE RESOLUTION PROCEDURES FOR HELP AMERICA VOTE ACT COMPLAINTS

432.1 On or before the 5th business day after a final Board determination with respect to a Help America Vote Act Title III complaint is due, the respondent shall designate in writing to the complainant the name of an arbitrator to serve on a panel to resolve the complaint.

432.2 Within 3 business days after the complainant receives the designation of an arbitrator, the complainant shall designate in writing to the respondent the name of a second arbitrator.

432.3 Within 3 business days after the complainant's designation of a second arbitrator, the two arbitrators designated shall select a third arbitrator to complete the panel.

432.4 The arbitration panel may review the record compiled in connection with the complaint, including the tape recording or any transcript of a hearing

closing the polls by a District law in effect 10 days before the date of that election; or

- (k) Has not previously voted in a Federal election in the District and who registers to vote by mail and fails to present, either at the time of registration, at the polling place, or when voting by mail, either a copy of a current and valid photo identification, a copy of a current utility bill, bank statement, government check, paycheck, or other document that shows his or her name and address.

Amend Section 722 by:

- 1) Deleting Subsection 722.2 in its entirety and substituting the following in its place:

“722.2: At the time of voting, the Board shall provide the voter with written notice that indicates the manner by which he or she may learn whether the Board has decided to count or reject the voter’s special ballot, and of the dates scheduled for hearings for voters whose special ballots are rejected to contest the Board’s preliminary determination if they petition to do so.”;
- 2) Deleting current Subsections 722.4 through 722.6 in their entirety, and;
- 3) Adding new Subsections 722.4 through 722.7 to read as follows:

“722.4 Not earlier than eight (8) days and not later than ten (10) days after the date of any election, the Board shall, upon petition of the voter, conduct a hearing for the voter to contest the Board’s preliminary determination to reject the voter’s special ballot.

722.5 At the hearing, the voter may appear and give testimony on the question of the decision to reject the special ballot.

722.6 The Board shall make a final determination to either count or reject the voter’s special ballot within two (2) days after the date of the hearing.

722.7 The voter may appeal an adverse decision of the Board to the Superior Court of the District of Columbia within three (3) days after the date of the Board’s decision. The decision of the court shall be final and not appealable.”